

DARRELL DUANE SMITH
2/26/2024

MULLICAN, et al. v. STATE FARM
No. 5:23-cv-160-G

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

STEPHEN MULLICAN and)
KELLEY MULLICAN,)
)
Plaintiffs,)
)
-vs-) No. 5:23-cv-160-G
)
STATE FARM FIRE AND)
CASUALTY COMPANY,)
)
Defendant.)



VIDEOCONFERENCE DEPOSITION OF DARRELL DUANE SMITH

TAKEN ON BEHALF OF THE DEFENDANT

IN BEN WHEELER, TEXAS,

ON FEBRUARY 26, 2024

REPORTED BY: ELIZABETH J. CAMPBELL, CSR #162, RPR

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1 APPEARANCES
2

3 (All parties appearing remotely via Microsoft Teams)
4

5 FOR THE PLAINTIFFS:

6 TERRY M. MCKEEVER
7 Attorney at Law
8 P. O. Box 890420
Oklahoma City, Oklahoma 73189
tmm@fylaw.com
rina@fylaw.com

10 FOR THE DEFENDANT:
11

12 ANDREW J. MORRIS
13 Attorney at Law
14 Two Leadership Square, 8th Floor
211 North Robinson
Oklahoma City, Oklahoma 73102
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sandy.lewis@mcafeetaft.com

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1 S T I P U L A T I O N S

2 IT IS HEREBY STIPULATED AND AGREED BY and
3 between the parties hereto, through their respective
4 attorneys, that the videoconference deposition of
5 DARRELL DUANE SMITH may be taken on behalf of the
6 Defendant on February 26, 2024, in BEN WHEELER,
7 Texas, by Elizabeth J. Campbell, a Certified
8 Shorthand Reporter for the State of Oklahoma,
9 pursuant to Subpoena and Agreement and in accordance
10 with the Federal Rules of Civil Procedure.

11 IT IS FURTHER STIPULATED AND AGREED BY and
12 between the parties hereto, through their respective
13 attorneys, that all objections, except as to the
14 form of the question and responsiveness of the
15 answer, are reserved until the time of trial, at
16 which time they may be made with the same force and
17 effect as if made at the time of the taking of this
18 deposition.

19 * * * * *

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1 DARRELL DUANE SMITH,
2 being first duly sworn, deposes and says in reply to
3 the questions propounded as follows

4 * * * * *

5 (Proceedings commenced at 1:37 p.m.)

6 DIRECT EXAMINATION

7 BY MR. MORRIS:

8 **Q** Sir, would you please state your full name
9 for the record.

10 **A** Darrell Duane Smith.

11 **Q** Mr. Smith, we are taking this deposition via
12 videoconference. Mr. McKeever and Elizabeth and I are
13 all in various locations in Oklahoma City, I think.

14 If I understand correctly, you are in Texas
15 near the Dallas/Fort Worth metroplex; is that correct?

16 **A** Yes, sir.

17 **Q** We've all agreed, just so we've got a clean
18 record, stipulated and agreed that we'll take the
19 deposition this way. That saves Terry and me from
20 driving down there or you from driving up here. Save
21 everybody some funds. But for no other reason, I
22 would have been incentivized to drive to Waco and
23 watch my Bears lose in person over the weekend which
24 would have made me sad.

25 **A** Okay.

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1 not a particular property that's had a loss can be
2 repaired or just needs to be torn down and replaced
3 entirely?

4 **A** Correct. Yes, sir. And that was -- go
5 ahead.

6 **Q** And that only really comes into play if one
7 of the costs, either the repair or the replacement
8 cost is going to be under the limits; right? Because
9 if it's over the limits, it doesn't really matter what
10 you do, you're going to get paid the same amount
11 either way; correct?

12 **A** Correct. And that's -- and I think that's
13 what the engineer was alluding to as well. That's
14 kind of what I was seeing that it looked like to me
15 that it was, you know, it was going to max the policy
16 out based on what the repairs were going to be, you
17 know and so -- and that's -- the amount of the State
18 Farm estimate was already pretty high.

19 I don't remember what -- you know, where the
20 differences was but, you know, they -- it wasn't that
21 they did a terrible job. It's just, you know, by the
22 time you put the engineer report into play of all the
23 stuff that needed to be in the estimate, I think
24 that's where the differences really came out.

25 **Q** And if I remember correctly, based on what

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1 was in your file that I received and what was on the
2 list of information you reviewed, you never looked at
3 the policy; correct?

4 A I don't think I ever looked at the policy.
5 I think I looked at the -- because I remember seeing
6 the numbers somewhere. It must have been on the State
7 Farm estimate. It might have said some kind of
8 coverage or something, that I recall.

9 I was kind of wondering, you know, based on
10 what I was seeing versus what the engineer was saying
11 versus what State Farm had already written for, you
12 know, the feasibility there was going to be real
13 close.

14 Q Let me show you. I've got to find it in one
15 second and then we'll take a break here in a minute.

16 A Okay.

17 Q Okay. So, Mr. Smith, this is your report;
18 right?

19 A Correct.

20 Q Here you've got listed materials reviewed,
21 the engineer report you mentioned, State Farm's
22 estimate, the Oklahoma County Assessor's website, fire
23 department report, some photographs and the
24 Matterport.

25 A Yes.

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1 **Q** It doesn't list the insurance policy;
2 correct?

3 **A** No. I don't -- I don't believe I had access
4 to the policy.

5 **Q** If that's something you did have access to
6 and reviewed, would you have listed it here?

7 **A** Yes, sir.

8 **Q** Okay. Let me ask you one other thing while
9 we're here. So this is your 544 page file that I
10 received.

11 **A** Okay.

12 **Q** We've got one copy of the report here what's
13 been Bates starting at 275, five pages and then we've
14 got another copy down here starting at 540. It looks
15 to me like this is the same report included twice.

16 Are there different drafts or versions of
17 the report, to your knowledge?

18 **A** Not that I'm aware of unless I went back and
19 updated something. I don't -- I don't remember doing
20 that but that would -- unless it just got put in there
21 twice for whatever reason.

22 **Q** Okay. I just wanted to see if I could get
23 some clarification on that.

24 MR. MORRIS: Let's take about a 10-minute
25 break. It's 2:39 so let's come back at 2:50.

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1 Because pricing alone just with COVID, you know, was a
2 20 to 30 to 40 percent increase, and then in 2020
3 hurricane season was another huge increase.

4 So, you know, for it to be an estimate that
5 size for it to be an \$80,000 swing is probably not,
6 you know, that wide of a variance.

7 **Q** Let's look. Here's his estimate. Looks
8 like he's using a February 2021 OKC price list; right?

9 **A** Okay.

10 **Q** This is at Mullican-Smith_001. Then we go
11 down to your estimate. Looks like you're using a
12 November 23 OKC price list; right?

13 **A** Yes, sir.

14 **Q** So do you think that's probably the majority
15 of the difference?

16 **A** I would say, you know, it's possible that I
17 got some, you know, additional line items, you know,
18 just like you mentioned earlier about, you know,
19 finding supplements, you know.

20 There might be some things that I picked up
21 on, you know, based on what the engineer said needed
22 to be done that I included that maybe the adjuster or
23 the public adjuster didn't include, and then you take
24 that into account, you know, a few additional line
25 items. Plus the, you know, almost two-year difference

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1 recalculated.

2 Q How long does that take?

3 A Oh. I'd say 10 or 15 minutes maybe.

4 Q Okay.

5 MR. MCKEEVER: No further questions at this
6 time.

7 REDIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Mr. Smith, have you been asked to do
10 anything like that, i.e. calculate anything regarding
11 a different price list to date?

12 A Have I?

13 Q Yes.

14 Have you been asked to do that?

15 A No. If you all need me to.

16 Q Is there anything regarding calculations
17 using a different price list anywhere in the report
18 that you produced in this matter?

19 A No.

20 MR. MORRIS: That's all I have.

21 MR. MCKEEVER: You have the right to review
22 your deposition transcript and review it and, you
23 know, and you may have done this before in your other,
24 to review for typographical errors and correct that
25 with an errata sheet or you can waive that review.

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1 J U R A T
2

3 STATE OF _____)
4 COUNTY OF _____) SS:
5

6 I, DARRELL DUANE SMITH, do hereby state
7 under oath that I have read the above and foregoing
8 deposition in its entirety and that the same is a
9 full, true and correct transcription of my testimony
10 so given at said time and place, except for the
corrections noted.

11
12 CORRECTIONS ATTACHED
13 NO CORRECTIONS
14

15 _____
16 DARRELL DUANE SMITH
17

18 Subscribed and sworn to before me, a Notary
Public in and for the State of _____ by
19 said witness, DARRELL DUANE SMITH, on this, the
20 _____ day of _____, 2024.

21 _____
22 Notary Public in and for the State of _____
23 _____
24

25 My Commission Expires: _____

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1 E R R A T A S H E E T

2 DEPOSITION OF DARRELL DUANE SMITH

3 IN RE: MULLICAN, et al. vs. STATE FARM; 5:23-cv-160-G

4 DATE: FEBRUARY 26, 2024

5 REPORTER: ELIZABETH J. CAMPBELL, CSR, RPR

6 TRIAL DATE: N/A

7 PG/LN CORRECTION REASON FOR CORRECTION

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PG/LN	CORRECTION	REASON FOR CORRECTION
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1 C E R T I F I C A T E

2 STATE OF OKLAHOMA)
3 COUNTY OF OKLAHOMA) SS:
4

5 I, ELIZABETH J. CAMPBELL, a certified
6 shorthand reporter within and for the State of
7 Oklahoma, certify that DARRELL DUANE SMITH was by me
8 sworn to testify the truth; that the deposition was
9 taken by me in stenotype and thereafter transcribed
10 by computer and is a true and correct transcript of
11 the testimony of the witness; that the deposition
12 was taken on February 26, 2024, at 1:37 p.m., Ben
13 Wheeler, Texas; that I am not an attorney for or a
14 relative of any party, or otherwise interested in
15 this action.

16 Witness my hand and seal of office on this
17 the 27th day of February, 2024

18
19 
Elizabeth J. Campbell, CSR
Oklahoma CSR No. 162
Expires December 31, 2024



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1 MEMORANDUM
2

3 TO: DARRELL DUANE SMITH
duane@boviniconsultants.com
4
5 FROM: ELIZABETH CAMPBELL, CSR, RPR
5505 N. Brookline Avenue, #1504
6 Oklahoma City, Oklahoma 73112
7

8 DATE: February 28, 2024
9

10 STYLE: MULLICAN, et al. vs. STATE FARM;
5:23-cv-160-G
11

12 Please read your deposition in the
13 above-styled case and sign the jurat page before a
notary public. Also, make any needed corrections on
the enclosed errata sheet and not directly on the
transcript.

14 Please return the signed jurat page and
15 errata sheet to my office within 30 days from the date
of this letter so that I can forward the original
16 deposition transcript to the attorney who took the
deposition.

17 If I do not receive the signed jurat and
18 errata sheet back within 30 days, I will file the
original deposition as is with the attorney who took
19 the deposition.

20 Thank you for your attention and cooperation
21 in this matter.
22
23

24 OA: MR. ANDREW MORRIS
25 MR. TERRY MCKEEVER